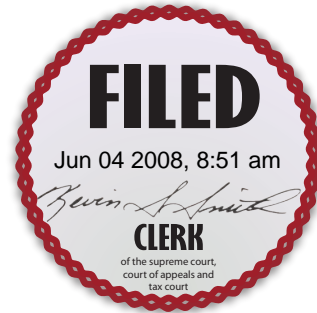


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE  
COURT OF APPEALS OF INDIANA**

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JONATHAN WATKINS,  
  
Appellant-Defendant,

vs.

STATE OF INDIANA,  
  
Appellee-Plaintiff.

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No. 49A02-0710-CR-884

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APPEAL FROM THE MARION SUPERIOR COURT  
The Honorable Patricia J. Gifford, Judge  
Cause No. 49G04-0704-FC-064003

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**June 4, 2008**

**MEMORANDUM DECISION – NOT FOR PUBLICATION**

**MATHIAS, Judge**

Jonathan Watkins (“Watkins”) was convicted in Marion Superior Court of Class C felony robbery and Class D felony confinement. The trial court also found that Watkins was a habitual offender. Watkins was sentenced to an aggregate term of twenty years. Watkins appeals and argues that the trial court erred when it admitted probable cause affidavits and arrest reports into evidence during the habitual offender phase.

We affirm.

### **Facts and Procedural History**

On April 13, 2007, Watkins entered a bank and gave a note to the teller informing her that his wife was being held hostage and that he was being forced to rob the bank. Watkins demanded and was given money. He left the bank and went to a nearby McDonald’s followed by an employee of the bank. Watkins was arrested at the McDonald’s after an employee called 911. He was brought back to the bank where the bank employees identified him as the robber. Money from the bank was found on his person.

On April 16, 2007, the State charged Watkins with Class C felony robbery and Class D felony confinement. The State later amended the information to include a habitual offender enhancement. On April 21, 2007, Watkins was found guilty as charged after a two-day jury trial. Watkins waived his right to a jury trial on the habitual offender enhancement. Following the presentation of evidence, the trial court found Watkins to be a habitual offender.

On September 7, 2007, the trial court imposed an eight-year sentence on the Class C felony robbery and three years on the Class D felony confinement, to be served

concurrently. The trial court enhanced the eight-year sentence on the Class C felony by twelve years for the habitual offender determination. Watkins now appeals.

### **Discussion and Decision**

Watkins contends that the trial court erred when it allowed the State to submit probable cause affidavits and arrest reports in support of the habitual offender finding. The admission and exclusion of evidence lies within the sound discretion of the trial court, therefore we review admission of evidence for abuse of that discretion. State v. Lloyd, 800 N.E.2d 196, 198 (Ind. Ct. App. 2003). Such an abuse occurs when the “decision is clearly against the logic and effect of the facts and circumstances.” Id. We will only consider “evidence in favor of the trial court’s ruling and unrefuted evidence in the appellant’s favor.” Id.

To be found a habitual offender, Watkins must have committed two prior, unrelated felonies. The second felony must have been committed after sentencing for the first felony, and the current felony must have been committed after sentencing for the second felony. Ind. Code § 35-50-2-8 (2004).

During the hearing on the habitual offender enhancement, the State offered a packet of documents to prove three prior felonies. The trial court admitted State’s Exhibit 24, 25 and 26. Each exhibit contained copies of the charging information, plea agreements, probable cause affidavits, arrest reports, and abstracts of judgment. Exhibit 24 included information regarding a conviction for a Class B felony robbery in 1985. Exhibit 25 included information regarding a conviction for a Class C felony robbery in 1997. Exhibit 26 included information regarding a conviction for a Class C felony

robbery in 1999. The evidence admitted established that Watkins committed three prior felonies.

Watkins argues that the probable cause affidavits and arrest reports were inadmissible hearsay. The documents complained of are not hearsay. The documents were submitted to identify Watkins, not to prove the truth of the matter asserted, i.e. that Watkins actually committed the crimes alleged in the probable cause affidavits and the arrest reports.

Furthermore, even if the court erred in admitting the documents, its error was harmless. The admission of the plea agreements and the abstracts of judgment provided sufficient basis for the trial court to conclude that Watkins had committed three prior unrelated felonies. The probable cause affidavits and arrest reports “tend[] only to disclose a fact proven by other properly admitted evidence” and any error is harmless. Cornett v. State, 536 N.E.2d 501, 506 (Ind. 1989).

We conclude that the trial court did not abuse its discretion in admitting the probable cause affidavits and arrest reports in the habitual offender proceeding.

Affirmed.

MAY, J., and VAIDIK, J., concur.